

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

| | | |
|-------------------------------|---|------------------------------|
| IN RE: |) | Chapter 13 Case |
| |) | Number <u>92-10109</u> |
| WILLIE BOYKIN ELAM |) | |
| EYVONNE B. ELAM |) | |
| |) | |
| Debtors |) | |
| _____) | | |
| |) | |
| WILLIE BOYKIN ELAM |) | FILED |
| EYVONNE B. ELAM |) | at 10 O'clock & 37 min. A.M. |
| |) | Date: 9-14-92 |
| Movants |) | |
| |) | |
| vs. |) | |
| |) | |
| STATES OF GEORGIA, |) | |
| DEPARTMENT OF HUMAN RESOURCES |) | |
| |) | |
| Respondent |) | |

ORDER

Willie Boykin Elam and Eyvonne B. Elam, debtors in this Chapter 13 proceeding object to the proof of claims submitted by the respondent, State of Georgia, Department of Human Resources Child Support Division in the amount of Seventeen Thousand Fifty-Five and 34/100 (\$17,055.34) Dollars filed as an unsecured nondischargeable claim for child support. The facts are not in dispute. The State of Georgia holds a judgment dated November 30, 1987 against the debtor Willie B. Elam establishing Mr. Elam as the father of Tordell Stokes and establishing a judgment for past due child support due

burden of going forward with evidence to sustain the claim shifts to the claimant. See In re: Cherry, 116 B.R. 315, 316 (Bankr. M.D. Ga. 1990). The ultimate burden of persuasion rests with the claimant. See id.

In this case, the debtor has failed to make a prima facie showing that the claim is objectionable. The claim on its face is for back child support and is

supported by a judgment of the Superior Court of Richmond County, Georgia, which judgment remains undisturbed as of the date of hearing. This proof of claim supported by a judgment, requires more than a simple assertion by the debtor that he does not owe the money to place the claim in issue. The debtor having failed to establish a prima facie basis for objection to the claim, the objection is ORDERED overruled and the claim is allowed. Additionally, the debtor has admitted alone Thousand Eighty and No/100 (\$1,080.00) Dollars post petition delinquency. The claim of the State of Georgia, Department of Human Resources Child Support Division is ORDERED increased to Eighteen Thousand One Hundred Thirty-Five and 34/100 (\$18,135.34) Dollars.

This case represents a continuation of the domestic relations dispute between Mr. Elam and the State of Georgia for the recovery of parental support.

Traditionally, the federal courts have been wary of becoming embroiled in family law matters. . . .

. . . Decisions which involve alimony or child support, generally under continuing

supervision by the state courts, could require the bankruptcy court to second guess the state court on such matters and could produce conflicting court decrees further aggravating an already delicate situation. Nor was it "the 'intent of the new Bankruptcy Code to convert the bankruptcy courts into family or domestic relations courts -- courts that would in turn, willy - nilly, modify divorce decrees of state courts insofar as these courts had previously fixed the amount of alimony and child support obligations of debtors.'" Caswell [v. Lang, 757 F.2d 608, 610-11 (4th Cir. 1985)] (quoting In re: Garrison, 5 B.R. 256, 260 (Bankr. E.D. Mich. 1980)). "It is appropriate for bankruptcy courts to avoid incursions into family law matters 'out of consideration of court economy, judicial restraint, and deference to our state court brethren and their established expertise in such matters.'" In re: McDonald, [755 F.2d 715, 717-19 (9th Cir. 1985] (quoting In re: Graham, 14 B.R. 246, 248 (Bankr. W.D. Ky. 1981)).

. . . .

It is precisely this type of situation, where

determination of an issue otherwise within the jurisdiction of the bankruptcy court would entangle the court in matters primarily of state concern, that Congress addressed in the statute outlining the bankruptcy jurisdiction of the federal courts. 28 U.S.C. §1334(c)(1) provides: "Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respectful State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." The court may abstain upon request of a party or sua sponte. "The abstention provisions of the ~Bankruptcy Code] demonstrate the intent of Congress that concerns of comity and judicial convenience should be met, not by rigid limitations on the jurisdiction of federal courts, but by the discretionary exercise of abstention when appropriate in a particular case In re:

Wood, 825 F.2d 90, 93 (5th Cir. 1987).

Carver v. Carver, 954 F.2d 1573, 1578-79 (11th Cir. 1992) (footnote omitted).

Mr. Elam has testified that he has retained counsel to challenge the judgment of the Superior Court in the Superior Court| which is the appropriate forum for dealing with this domestic relations dispute. However, until that challenge is resolved, under| the judgment, the debtor is obligated to make monthly payments of One Hundred Thirty-Five and No/100 (\$135.00) Dollars. It is therefore further ORDERED that the stay of 11 U.S.C. §362(a) is modified to the extent necessary to allow the State of Georgia, Department of Human Resources to pursue enforcement of the judgment for the payment of support obligations in the amount of One Hundred Thirty-Five and No/100 (\$135.00) Dollars per month due for the month of September, 1992 forward. The State of Georgia is authorized to take all steps necessary and available under applicable State law for the collection of the post September, 1992 support obligation.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 11th day of September, 1992.